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File No. O. Medical Council/44.

Legal Department

A **BRANCH**

Subject:—

Opinions under the

Bombay Medical Council

Act, 1912

E/1-4

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Office of the R.L.A.

The facts of the case are that Dr. Jivraj N. Mehta, a member of the Bombay Medical Council elected under section 2(2) (e) of the Bombay Medical Council Act, 1912 was unable to attend three consecutive meetings of the Medical Council Held on 23-11-1942, 22-2-1943 in consequence of his detention under the Defence of India Rules. Dr. Mehta applied for leave of absence from the Medical Council on 20-1-1943 which was granted by a resolution of the Medical Council adopted on 22.2.1943. At a subsequent meeting it was contended that Dr. Mehta having absented himself from three consecutive meetings, irrespective of the leave granted to him by the Medical Council had ipso facto ceased to be a member of the Medical Council and therefore his seat must be declared vacant. As opinion of the Medical Council was divided on the point the President of the Medical Council has referred the following question to the R.L.A. for opinion:-

(a) Whether the Medical Council is empowered to grant leave of absence <u>within India</u> under section 3(4)(a) of the Bombay Medical Council Act, 1912, and

(b) Whether the seat of Dr. Mehta has to be declared vacant under sections 3(4)(c) of the said Act.

2. Section 3(4) (a) empowers the Medical Council to grant leave of absence <u>from India</u> and not <u>within India.</u> The deliberate use of the words "from India" connotes that the Legislature intended to confer on the Medical Council restricted power of granting leave of absence only in cases where the members intended to leave India and not in any other case.

3. Adverting to second question, section 3(4)(a) enacts that in any case not provided for in clauses (a) and (b) if any member of the Medical Council shall absent himself from three cons-ecutive meetings of the Medical Council, the Medical Council may forthwith declare his seat vacant and such declaration shall have the same effect as resignation of his seat by the member concerned. Unlike Municipal and Local Boards Acts,*/ the Bombay Medical Council Act does not contain any mandatory provision where by the seat of a member is automatically rendered vacant by reason of the member's absence from successive meetings. The words -"the Medical Council may forthwith declare his seat vacant"- give the Medical Council a discretion in the matter. The Council is not bound to pass a resolution declaring the seat vacant even though such a resolution would be justified from the circumstances under which the member remained absent from three successive meetings. But if the Council decides upon declaring the seat vacant, it must first take care to see that its resolution is legally justifiable. Before a seat can be declared vacant under section 3 it must be estabIsihed that the defaulting member had remained absent from three consecutive meetings. The expression used in section 3(4)(c) - "shall absent himself", has a special significance of its own and connotes voluntary or deliberate absence and not enforced absence as in the present case. A person who is unable to attend the meeting or meetings by reason of his detention under the Defence of India Rules cannot strictly be said to have voluntarily absented himself so as to incur disqulaification. In this connection, attention is invited to R.L.A's opinions Nos.

30-Confl. dated 17-1-1941 and No. 10772, dated 13-12-1941.

Id/- P.M.M.
21/1/44.

U.R. to G.D. No. 543, dated the 21st January, 1944.

MSR.
10/7.

6325
21/7.

Submitted.

2. A meeting of the Bombay Medical Council was called on 25th February 1944 but as the number required for quorum was not present the meeting was adjourned without transacting any business. The members attending the meeting ~~xx~~ claimed fees for that day. The Registrar Bombay Medical Council appears to hold the view tht as there was no meeting the members are not entitled to any fees under rule 63 of the Rules of the Bombay Medical Council made under s-ection 19(2) of the Bombay Medical Council ~~xxxxxxxxxxxxxxxxxx~~ Act, 1912. The R.L.A. is requested to advise whether the members attending a meeting of the Council which was adjourned without transacting any business are entitled to claim fees for attendance under rule 63 of the Rules made by the Bombay Medical Council.

3. Rule 63 read with rule 61 of the Rules made by the Bombay Medical Council under section 19 of the Bombay Medical Act, 1912 provides that the fees for attendance on the Council shall be fifty Rupees a day for each member attending. Rules 61 to 63 have been made to carry out the provisions of section 15 of the Bombay Medical Act, 1912 which provides that there shall be paid to the members of the Medical Council such fees for attendance and such reasonable travelling expenses as shall from time to time be allowed by the Medical Council and approved by the Provincial Government. A member attends a meeting on receiving the summons frm the Registrar under rule 3 of the Rules of the Bombay Medical Council. It is for this attendance tht the Act as well as the

provide for payment of fees. Whether, after a member had attended a meeting, any business is transacted or not at the meeting is not of material imporatance in deciding whether a member is or is not entitled to any fees. The act and the Rules made thereun er contemplate that a member should be paid for attendance on the Council.

Sd/- K.J. Pathare
22/7.

S.A.S. I agree

Reading rules 61 and 63 of the rules made under the Bombay Medical Act, 1912 it seems clear that members who attend the meeting of the Council, the Executive Committee or Sub-Committee will be entitled to the fees for attendance, notwithstanding its adjornment of want of quorum.

Id/- R.T.K.
24/7.

A.L.R. I agree.

Reply may be S.A.S.' note

Id/- R.S.H.
26/7.

R.L.A. Id/- P.N.M.
28/7.

U.R. to G.D. No. 5387 dated 31-7-44.

MBR.
10/7.